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In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 579.

ST. LUKE'S HOSPITAL ASSOCIATION OF CLEVELAND, OHIO, OF THE METHODIST CHURCH,
a non-profit corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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TABLE OF CONTENTS.

Citation to Opinions Below 1

Jurisdiction 2

Question Presented 2

Statutes Involved 2

Statement of the Case 2

Reasons For Granting the Writ 6

Conclusion 11

Appendix:

Opinion of the United States District Court For the Northern District of Ohio, Eastern Division ... 13

Judgment of the United States District Court 31

Opinion of the United States Court of Appeals For the Sixth Circuit 31

Judgment of the United States Court of Appeals 55

Statutes Involved 56

TABLE OF AUTHORITIES.

Cases.

Commissioner v. Duberstein, 363 U. S. 278 (1960) 6

Federal Security Insurance Company v. Smith, 259 F. 2d 294 (10th Cir., 1958) 7

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U. S. 238 (1944) 8

Helvering v. Davis, 301 U. S. 619 (1937) 9

Lindsey v. Oregon-Washington Plywood Company, 287 F. 2d 710 (10th Cir., 1961) 7

McAllister v. United States, 348 U. S. 19 (1954) 6

Pendergrass v. New York Life Ins. Co., 181 F. 2d 136 (8th Cir., 1950) 7

Realty Acceptance Corp. v. Montgomery, 284 U. S. 547 (1932) 8

Schneider v. Kelm, 237 F. 2d 721 (8th Cir., 1956) 7

United States v. Oregon State Medical Society, 343 U. S. 326 (1952) 6

United States v. United States Gypsum Co., 333 U. S. 364 (1948) 6, 7

Wunderlich Contracting Company v. United States, 240 F. 2d 201 (10th Cir., 1957) 7

Statutes.

Internal Revenue Code of 1939:

Sec. 1400 3

Sec. 1410 3

Sec. 1426(b)(14) 2, 3, 4, 56

Internal Revenue Code of 1954:

Sec. 3101 ..... 3 9

Sec. 3111 ..... 3, 9

Sec. 3121(b)(13) 2, 3, 4, 10, 56

28 U. S. C. 1254(1) 2

28 U. S. C. 1346 3

Federal Rules of Civil Procedure.

Rule 52(a) 6

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a non-profit corporation,
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vs.

UNITED STATES OF AMERICA,
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PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

Petitioner, Saint Luke's Hospital Association of Cleveland, Ohio, of the Methodist Church, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case June 18, 1964.

A copy of this judgment and order as well as the judgment of the United States District Court for the Northern District of Ohio are printed in the Appendix hereto at p. 55 and p. 31 respectively.

CITATION TO OPINIONS BELOW.

The Memorandum Opinion of the United States District Court for the Northern District of Ohio, printed herewith at App. p. 13 is reported in 212 Fed. Supp. 387. The Opinion of the United States Court of Appeals for the Sixth Circuit is reported in 333 F. 2d 157 and is printed herewith at App. p. 31.

JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on June 18, 1964 (App. p. 55). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTION PRESENTED.

Whether or not the exclusion from the Federal Insurance Contributions Act for "interns" as set forth in Int. Rev. Code of 1954, § 3121(b)(13) and Int. Rev. Code of 1939, § 1426(b)(14) applies to all medical school graduates engaged in a program of in-hospital training, without regard to the year of training.

STATUTES INVOLVED.

The statutory provisions involved are Int. Rev. Code of 1954, § 3121(b)(13), formerly Int. Rev. Code of 1939, § 1426(b)(14), and are set forth in the Appendix hereto, p. 56.

STATEMENT OF THE CASE.

Petitioner, Saint Luke's Hospital Association of Cleveland, Ohio, of the Methodist Church, a non-profit corporation, for many years and during all the period involved in this lawsuit has conducted a formal program of in-hospital education and training for graduates of accredited medical schools, designed to prepare such graduates for the practice of medicine in both general and special fields.

To permit those participating in this program to carry out their training, a stipend in varying amounts is granted by the hospital.

The taxes involved are employment taxes imposed by the Federal Insurance Contributions Act (both the so-called employer's tax imposed by § 3111, and the so-called employee's tax, imposed by § 3101, of the Int. Rev. Code of 1954, and the corresponding taxes imposed by § 1410 and § 1400 of the Int. Rev. Code of 1939).

Under the authority of the foregoing sections, employment taxes were assessed and collected from the Petitioner by the District Director of Internal Revenue attributable to the stipends granted by the Petitioner to "residents-in-training"—those individuals engaged in their second or subsequent years of post-graduate training.

Petitioner paid the taxes in question and filed its claim for refund asserting that its residents-in-training were excluded from employment taxes imposed by the Federal Insurance Contributions Act by reason of Int. Rev. Code of 1954, § 3121(b)(13), and the corresponding provision of Int. Rev. Code of 1939, § 1426(b)(14).

This exclusion was enacted into law in 1939, and provides that interns in the employ of a hospital are excluded from the operation of the taxes imposed by the Federal Insurance Contributions Act.

Upon disallowance of Petitioner's claim for refund, the action was instituted in the Federal District Court for the Northern District of Ohio under 28 U. S. C. § 1346 to recover employment taxes and interest claimed to have been illegally assessed against the hospital and its medical school graduates engaged in their second and subsequent years of in-hospital training. Judgment in the amount of $19,301.39 was rendered by the District Court in favor of the Petitioner.

In its Memorandum Opinion, after summarizing the respective contentions of the parties, the District Court

found that the basic question presented for determination was the meaning and scope of the word "intern" as used by Congress in the exclusionary language of Int. Rev. Code of 1954, § 3121(b)(13) (formerly Int. Rev. Code of 1939, § 1426(b)(14)). (App. p. 16.)

The District Court reasoned that the meaning of the words of this statute must be taken in the sense in which they were understood at the time of enactment. The District Court, therefore, focused its attention on the year 1939, the time of the amendment of the Social Security Act providing for the exclusion of "interns" from the coverage of the Act (App. p. 16). It found that in 1939, as contended by the Petitioner, the common and ordinary meaning of the word "intern" encompassed any medical school graduate engaged in any year of in-hospital training, i.e., interns and residents-in-training (App. p. 18).

In rejecting the Respondent's contention that the word "intern" was used by Congress in a restrictive and technical sense, the District Court subscribed to the well-recognized rule of statutory construction that legislation, when not expressed in technical terms, "is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has rights to rely on ordinary words addressed to him." (App. p. 20.)

The District Court further pointed out that when a word in a statute has both a technical and a common and ordinary meaning, the latter meaning will prevail over the former in the absence of any indication that the word was used in its technical sense. (App. p. 20.) The District Court concluded that the technical meaning sometimes ascribed in medical circles to the words "intern" and "resident" was not the understanding and intent of Congress in its use of the word "intern" in the 1939 Amendment to

the Social Security Act, since this Act was in the nature of general legislation directed to the public at large. (App. p. 22.)

The District Court said:

> "* * * Congress utilized the term 'intern' in 1939, in enacting § 1426(b)(14), in its broad generic sense, and that it was the intention of Congress thereby to exclude from coverage under the Social Security Act all medical school graduates engaged in a program of in-hospital training. The foundation for this conclusion goes deeper than reliance upon rules of statutory construction, and reflects, in the Court's opinion, a general Congressional attitude toward the medical graduate in relation to the Social Security program." (App. p. 23.)

The District Court also noted that self-employed doctors are excluded from coverage under the Social Security Act and that the majority of individuals after completing a period of in-hospital training, become self-employed doctors. (App. p. 23.) In the words of the District Court:

> "The span of most residency programs is from one to four years. It is most difficult to accept an interpretation of the statute which would result in exemption of the medical graduate for his first year of in-hospital training and during his entire professional life as a self-employed physician, and yet include him within the scope of the Social Security Act for the interim period of his residency." (App. p. 23.)

The District Court thereafter made the following finding:

> "It is the Court's finding that the exemption from the Social Security Act for 'interns' as set forth in § 3121(b)(13) applies to all medical graduates engaged in a program of in-hospital training, without regard to the year of training, and includes that group

> which are now known and which were then known as 'residents' or 'residents-in-training' within the medical profession in the year 1939." (App. p. 27.)

Upon appeal, the judgment of the District Court was reversed and remanded for entry of judgment for Respondent.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings in reversing the judgment of the District Court as to call for the exercise of this Court's power of supervision. Specifically we maintain that the Court of Appeals erred in the following respects:

a. In complete disregard of Rule 52(a) Federal Rules of Civil Procedure and contrary to accepted legal principles, the Court of Appeals has set aside the findings of the District Court although it failed to demonstrate that such findings were "clearly erroneous." *United States v. United States Gypsum Co.*, 333 U. S. 364 (1948), *United States v. Oregon State Medical Society*, 343 U. S. 326 (1952), *McAllister v. United States*, 348 U. S. 19 (1954) and *Commissioner v. Duberstein*, 363 U. S. 278 (1960).

The absence of the required definite and firm conviction that the District Court had erred is exhibited in the following comment by the Court of Appeals:

> "As to the interpretation of the 1939 amendment, we are unable to agree—albeit we recognize that reasonable minds could easily differ on issues of interpretation as finely spun as these." (App. p. 36.)

In similar situations, appellate courts of other circuits have concluded that "If, from established facts, reasonable men might draw different inferences, appellate

courts may not substitute their judgment for that of the trial court." *Federal Security Insurance Company v. Smith*, 259 F. 2d 294 (10th Cir., 1958), *Wunderlich Contracting Company v. United States*, 240 F. 2d 201 (10th Cir., 1957) and *Lindsey v. Oregon-Washington Plywood Company*, 287 F. 2d 710 (10th Cir., 1961).

Consequently, the Court of Appeals has prejudicially erred by "exercising * * * trial functions conferred by law upon the district courts." *Schneider v. Kelm*, 237 F. 2d 721 (8th Cir., 1956) and *Pendergrass v. New York Life Ins. Co.*, 181 F. 2d 136 (8th Cir., 1950). Its decision is in conflict in principle with the aforecited decisions of other circuits and is at variance with the criteria established by the Supreme Court. *United States v. United States Gypsum Co., supra.*

b. Furthermore, the conclusion of the Court of Appeals, that Congress did not intend that the word "intern" be used in its common and ordinary sense as it appears in the statute, is unsupported by and contrary to the evidence.

While acknowledging that in order to determine the intent of Congress in its use of the word "intern," it is necessary "to view the language of this 1939 statutory amendment in the light of 1939 facts and meanings" (App. p. 37), the Court of Appeals departs from its stated objective and attempts to support its decision by reference to the following:

(1) A 1960-61 publication. (App. p. 39).

(a) An unrelated 1947 statute. (App. p. 43).

(3) An opinion of the Ohio Supreme Court rendered some 20 years after the enactment of the provision in question. (App. p. 41).

(4) An unfounded assumption as to the expertise of the Congressional Committee drafting the legislation in question in 1939 which was applied to negative the common and ordinary meaning of the word intern. (App. p. 42.)

(5) A House Ways and Means Committee Report which distinguishes between the term intern and resident doctor (App. p. 42)—not intern and resident-in-training—it being clearly established that a resident doctor was one who had completed his formal in-hospital training and was employed full-time on a hospital staff as a physician or surgeon. (R. 67a, 82a, 24b, 37b.)

c. The Court of Appeals departed from accepted legal principles and prejudicially erred in considering extraneous matters submitted in response to hypothetical questions which assumed unlikely instances of death of doctor-trainees following longer periods of in-hospital training than established by the evidence. Not only were the hypotheses unrealistic, but the Court of Appeals further erred by (1) ignoring those decisions which prohibit the introduction of new evidence at the appellate level, *Realty Acceptance Corp. v. Montgomery*, 284 U. S. 547 (1932) and *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238 (1944) (O. Roberts, J., dissenting), and (2) accepting as true certain figures quoted by counsel for Respondent from a 1961 issue of Medical World News. These figures—from which the Court of Appeals drew the conclusion that "It also is obvious from the figures supplied by the government response that far more doctors achieve full and permanent coverage under Social Security than is commonly thought to be the case" (App. p. 44)—were entirely unrelated to the year 1939 and would have been rejected as the rankest form of hearsay if offered during the course of trial in the District Court.

d. The Court of Appeals also prejudicially erred in failing to recognize that the primary purpose of the Social Security Act is to provide retirement benefits.[1]

When the Appellate Court determined to investigate the economics involved by means of the aforementioned hypothetical questions, they, in fairness, should have sought information as to whether residents-in-training would normally acquire credits sufficient to qualify them for retirement benefits at the end of their careers as private practitioners. Instead, the hypothetical questions first enlarged the span of residency programs beyond the "one to four years" established by the evidence, and then assumed incidents of death of "married" residents-in-training in circumstances which are inconsistent with life expectancy tables. The Court of Appeals' resulting conclusion that "Social Security coverage does have a definite beneficial value in terms of insurance for the married residents-in-training" (App. p. 44) completely overlooks the tremendous cost[2] which would be incurred by hospitals and doctor-trainees in order to provide death benefits in rare cases by Social Security tax payments rather than by ordinary group life insurance policies.

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[1] The rationale of the Unemployment Compensation Act as well as the Social Security Act is discussed by Justice Cardozo in the case of *Helvering v. Davis*, 301 U. S. 619, 641 (1937). Justice Cardozo stated:

> "* * * But the ill is all one, or at least not greatly different, whether men are thrown out of work because there is no longer work to do or because the disabilities of age made them incapable of doing it. Rescue becomes necessary irrespective of the cause. *The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.*" (Emphasis supplied.)

[2] Combined employer-employee Social Security taxes now amount to 7¼% of wages and will reach 9¼% by 1968. (Int. Rev. Code of 1954, §§ 3101 and 3111.)

2. The correct interpretation of Int. Rev. Code of 1954, § 3121(b)(13) is of great importance to all hospitals throughout the United States and an untold number of medical school graduates who are and will be engaged in programs of in-hospital training, which the Court of Appeals observed have been "greatly expanded" since 1939. (App. p. 44.)

The Petitioner is only one of many hospitals which maintains and conducts programs of in-hospital training for medical school graduates. In 1953, the first year of assessment, there were over 725 such non-governmental hospitals in this country conducting in-hospital training programs in which over 16,000 residents-in-training participated.[3] While our record does not precisely reflect the numerical increase of hospitals and doctor-trainees over the last decade, it is evident that a large segment of the population is affected and that determination of this case by the Supreme Court is plainly in the public interest.

3. The correct interpretation of the federal statute involved by the Supreme Court is also of significant and continuing importance to the administration of the Social Security Act.

The issue presented in this case is the subject of other cases now pending in the lower courts as well as numerous claims for refund filed on behalf of hospitals similarly burdened with ever increasing costs of operation and patient care. Unless this case is reviewed by this court of last resort, hospital administrators, members of the medical profession and the Social Security Administration will continue to be uncertain as to their respective duties and obligations, and the cost of all resulting litigation will ultimately be borne by the general public.

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[3] Government's Exhibit No. 2.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX.

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

(Filed Dec. 17, 1962.)

GREEN, *J.*:

This is an action instituted by St. Luke's Hospital of Cleveland, Ohio, against the United States of America brought under § 1346, Title 28 of the United States Code as amended, and is for the recovery of Federal Insurance Contributions Act employment taxes imposed by Sections 3101 and 3111 of the Internal Revenue Code of 1954 as amended, 26 U. S. C. A. §§ 3101 and 3111, and Sections 1400 and 1410 of the Internal Revenue Code of 1939.

Plaintiff operates a general hospital at 11311 Shaker Boulevard, Cleveland 4, Ohio, and is a non-profit corporation duly organized and existing under the laws of the State of Ohio.

Plaintiff for many years and during all of the period involved in this lawsuit has maintained and conducted a formal program of in-hospital education and training for graduates of accredited medical schools, designed to prepare such graduates for the practice of medicine in both general and special fields. Those participating in the in-hospital training program are paid varying sums of money, denominated as a subsistence allowance by the hospital.

Plaintiff filed with the District Director of Internal Revenue at Cleveland, Ohio, its F. I. C. A. employment tax returns for each taxable period from January 1, 1953 through June 30, 1958, and paid to said District Director the F. I. C. A. employment taxes therein determined to be due. In such returns plaintiff included none of the funds

classed as subsistence allowances paid to the medical school graduates engaged in its training program.

No collection of the so-called "employees' tax" for such periods was made by the plaintiff from the medical school graduates and no remittance to the District Director of either the "employer's tax" or the "employees' tax" was made by the plaintiff.

Under date of July 30, 1958, the Internal Revenue Service notified plaintiff of a proposed assessment for additional F. I. C. A. employment taxes in the amount of $16,722.42. This sum represented taxes claimed to be due based on subsistence allowances paid by the plaintiff to medical school graduates engaged in their second or subsequent years of in-hospital training during the period of January 1, 1953 through June 30, 1958.

Under date of December 2, 1958, plaintiff paid to the District Director of Internal Revenue the sum of $16,722.42, and on March 25, 1959, paid interest thereon in the amount of $2,578.97. The total amount of taxes and interest paid to said District Director was $19,301.39.

On June 4, 1959, plaintiff filed with the District Director a claim for refund for the $19,301.39 additional F. I. C. A. employment taxes together with interest. Subsequently, plaintiff received from the District Director a notice of disallowance of its claim for refund.

Plaintiff thereafter filed this action, claiming that the F. I. C. A. employment taxes and interest covering the medical school graduates engaged in their second and subsequent years of in-hospital training were illegally assessed and collected.

Plaintiff alleged:

> 1. That under provision of Title 26 U. S. C. A. § 3121(b) (13), all of the medical school graduates who were in attendance in in-hospital training, whether in the first, second or subsequent years of

their training at the hospital, were exempted from the Act.

2. That the modest subsistence allowance given to the medical school graduates were gifts or gratuities granted in order to aid their education and training and did not constitute wages within the meaning of Sections 3101 and 3111, Title 26 U. S. C. A.

The Government contends that the exclusion under § 3121(b) (13) applied only to medical school graduates who were in their first year of in-hospital training and did not apply to any such medical school graduates who were in their second and subsequent years of training; that only medical school graduates in their first year of in-hospital training are "interns" and that those in second and subsequent years were known as "residents"; that the two classes are separate and distinct, and that therefore the exemption to "interns" in § 3121(b) (13) did not apply to graduates in their second or subsequent years of in-hospital training.

The Social Security Act Amendments of 1939, 26 U. S. C. A. § 1426(b) (14), first introduced into the social security law the exclusion from coverage for services performed by "interns". That Section now appears as 26 U. S. C. A. § 3121(b) (13), I. R. C., 1954, and reads as follows:

"(b) *Employment.*—For purposes of this chapter, the term 'employment' means any service performed after 1936 and prior to 1955 which was employment * * * under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 * * * except that, in the case of service performed after 1954, such term shall not include—

* * * * *

"(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school

by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; *and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law"* (Emphasis added).

The issue before the Court is the meaning and scope of the word "intern" as it is used in 26 U. S. C. A. § 3121 (b) (13).[1]

As previously stated, this provision was first enacted into law by the 1939 Amendments, and has not been materially altered by subsequent amendments to the Internal Revenue Code.

The interpretation of the words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted. 50 *Am. Jur.*, Statutes § 236, p. 224. Amendments of a statute by the Legislature will not affect the meaning of portions of the statute which are readopted by the Legislature without change. 50 *Am. Jur.*, Statutes § 441, p. 461. Therefore, the question for determination by the Court is the meaning of the word "intern" as used by Congress in the year 1939 in 26 U. S. C. A. § 1426(b) (14).

Plaintiff's claim is that in the year 1939 the natural, ordinary and everyday use of the term "intern" included any medical school graduate whether in his first, second or subsequent year of in-hospital training, and that under provisions of Title 26 U. S. C. A. § 3121(b) (13) medical school graduates who were in attendance for their second or subsequent years of in-hospital training were exempted

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[1] For the purposes of this opinion reference hereafter to § 3121(b)(13) of the 1954 Code is also intended to include § 1426(b)(14) of the 1939 Code.

from the act the same as medical school graduates in their first year of training.

The Government claim is that in the year 1939 there was in use in medical circles the words "intern" and "resident". An "intern" being a medical school graduate in his first year of in-hospital training and a "resident" being a medical school graduate in his second or subsequent year of in-hospital training. That in the year 1939 and at all times relevant to the lawsuit there was a well recognized distinction in the medical profession between residents and interns and that Congress in providing a specific exemption from the social security laws for "interns" did not thereby provide for an exemption for "residents".

Plaintiff's principal witnesses were men of the medical profession. They testified that at or around the year 1939 the ordinary and accepted meaning of the word "intern" was the same as the ordinary and accepted meaning of the word "resident", or "resident-in-training", and that they were both understood to be graduates of a medical school who were in residence in the hospital for additional education and training without regard as to whether it was the first or subsequent years of such training; that the generally accepted meaning of the word "intern" included a "resident" or "resident-in-training". These doctors admitted that within the medical profession a distinction was made between an intern and a resident,[2] but stated that the public failed to have, or understand, that delineation.

The defense called as its expert witness, Dr. Herman G. Weiskotten, an eminent medical administrator and educator, who testified that in the medical profession at

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[2] In 1939 plaintiff hospital had different applications for the positions of intern and resident.

or around the year 1939 there was a distinction between "interns" and "residents". He defined the term "internship" as follows:

> "That is, the internship was an approved educational and experience program to better prepare a man to initiate the practice of medicine following his four years as a student in a medical college."

And he defined the word "resident" when used in the context of the medical field as follows:

> "A resident was a man who took special hospital training of varying periods of time following an internship, to prepare him as a specialist in a particular field of medicine."

However, on cross-examination, he admitted that the distinction was drawn principally within the medical profession.

There was also brought into evidence several dictionaries published around the year 1939, in order to present definitions of the words "intern" and "resident". Some of the dictionaries gave a definition for each of these words, making a distinction between them, whereas other dictionaries of the same era made no distinction. A few gave no definition of the word "resident" as used in the medical sense.

It is the Court's conclusion that in 1939 the common and ordinary meaning of the word "intern" encompassed any medical school graduate engaged in any year of in-hospital training and that within the medical profession a technical distinction was made between the words "intern" and "resident".

The basic controversy thus resolves itself to a question of statutory construction. Plaintiff argues that the Court should apply the common ordinary understanding of the term, whereas defendant contends that the term should

be given the meaning attributed to it in its technical sense as used in the medical profession.

The rule the Court must follow is to construe the statutes so as to give effect to the intent of Congress.

> "In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress." *United States v. American Trucking Assn., Inc.*, 310 U. S. 534, 542 (1940).

Plaintiff has cited to the Court the following excerpt from the legislative history:

> "And service performed as an interne (as distinguished from a resident doctor) in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law." (House Report No. 728, at p. 49; Senate Report No. 734, at p. 58.)

The evidence in this case indicated that in 1939 the term "resident doctor" was generally applied to a physician who had completed all his formal and in-hospital training and was regularly employed by a hospital, in the same manner as a pathologist might be today.

Although the legislative history does not define "resident doctor", just as it does not define "intern", the Court is inclined to the view that Congress intended to use the term "resident doctor" to signify a non-trainee employee of a hospital, which was the generally held meaning of the term. The term "resident doctor" may be contrasted with the use of the term "resident-in-training" in a statute wherein it is clear Congress was dealing with a student-employee, 5 U. S. C. A. § 1052.

It is admitted by both parties that otherwise the legislative history of the statutes in question is particularly barren of any indication as to the Congressional intent.

There is no evidence that Congress intended a restrictive or technical use of the word "intern".

Under such circumstances, this Court is inclined to follow the rule stated in the case of *Addison v. Holly Hill Fruit, Inc.*, 322 U. S. 607, 617-18 (1944):

> "* * * For the ultimate question is what has Congress commanded, when it has given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. * * * *After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him.*" (Emphasis added).

In addition, when a word which has both a technical and a common and ordinary meaning appears in a statute, the latter meaning will prevail over the former in the absence of any indication that the word was used in its technical sense. *Jones v. Liberty Glass Co.*, 332 U. S. 524 (1947); *Crane v. Commissioner*, 331 U. S. 1 (1946); *Rosenman v. United States*, 323 U. S. 658 (1945); *Anderson v. United States*, 119 F. Supp. 567 (D. C. Mont., 1954); *Orr Ditch & Water Co. v. Justice Court of Reno Twp.*, 178 P. 2d 558 (Sup. Ct. Nev., 1947); *Terral v. Terral*, 205 S. W. 2d 198 (Sup. Ct. Ark., 1947); *Industrial Commission v. Roth*, 98 Oh. St. 34 (1918); *State v. Tardiff*, 90 Atl. 424 (Sup. Jud. Ct. Me., 1914).

Counsel for the Government, in support of its position that the technical meaning of a word should prevail in interpreting a statute, has argued that the words of a statute are to be taken in the sense in which they will be understood by the public to which they are directed.

The key to this rule is that the statute itself must be directed to a particular segment of society.

A number of cases have been cited, wherein this rule has been applied. The Court has considered them, and finds that they are not analogous to the matter under consideration.

In *O'Hara v. Luckenbach Steamship Co.*, 269 U. S. 364 (1926), the statute under consideration was § 2 of the Seaman's Act of March 4, 1915. This Act involving the safety and welfare of the seaman was directed solely to individuals and companies in the maritime trade, and its language was construed as it would be understood in that particular field.

The theory that a statute restricted to one field or segment of society should be construed in accordance with that group's understanding was explained in *N. L. R. B. v. Coca-Cola Co.*, 350 U. S. 264 (1956), wherein the Court said:

> "But if the word be deemed to have a peculiar connotation for those intimate with trade-union affairs, it is incumbent upon us to give the word its technical meaning, Boston Sand Co. v. United States, 278 U. S. 41, 48, 73 L. ed. 170, 177, 49 S. Ct. 52, for § 9(h) [National Labor Relations Act] is an integral part of a statute whose sponsors were familiar with labor organizations and labor problems and which was doubtless drawn by specialists in labor relations." 350 U. S. 264, 269.

In some cases, the title of the statute under consideration makes immediately obvious the public to which it is directed, e.g., "Taxes on Insurance Companies," *Western & Southern Life Ins. Co. v. Huwe*, 116 F. 2d 1008 (CA 6, 1941); "Taxes on Soft Drinks," *Carter v. Liquid Carbonic Pacific Corp.*, 97 F. 2d 1 (CA 9, 1938).

The Supreme Court decisions of *United States v. Isham*, 84 U. S. 496 (1873), *Boston Sand & Gravel Co. v.*

United States, 278 U. S. 41 (1928) and *Deputy v. Dupont*, 308 U. S. 488 (1940) are cited. In *Boston Sand & Gravel* the Supreme Court found guidance from prior usage of the language by Congress. In both *Isham* and *Dupont* the Supreme Court adopted broader definitions of the language in question, rejecting proposed technical definitions. In *Dupont* the Supreme Court reaffirmed its holding in *Old Colony Railroad Co. v. Commissioner*, 284 U. S. 552 (1932), wherein it was said:

> "The rule which should be applied is established by many decisions. 'The legislature must be presumed to use words in their known and ordinary significance.' [citations omitted]. 'The popular or received import of words furnishes the general rule for interpretation of public laws.'" [citations omitted.] 284 U. S. 552, 560.

In the case before the Court the statute is not restricted to any one segment of society or to any one special field. There is no prior Congressional usage of the language which the Court can look to. The statute in question bears no title from which it can be ascertained as to whom it was directed.

The fact of the matter is that 26 U. S. C. A. § 3121 contains eleven major divisions. Section 3121(b), being one of the eleven divisions, contains exclusions from coverage for fifteen major categories with twenty subgroupings, relating to many individuals in various unrelated fields of endeavor.

The Court does not believe that the technical meaning ascribed in medical circles to the words "intern" and "resident" must be said to be the understanding and intent of Congress in its use of the word "intern" in a statute of such breadth and scope which did not deal solely with hospitals and the medical profession.

At this point it should be stated that the Court has concluded that Congress utilized the term "intern" in 1939, in enacting § 1426(b)(14), in its broad generic sense, and that it was the intention of Congress thereby to exclude from coverage under the Social Security Act all medical school graduates engaged in a program of in-hospital training. The foundation for this conclusion goes deeper than reliance upon rules of statutory construction, and reflects, in the Court's opinion, a general Congressional attitude toward the medical graduate in relation to the Social Security program.

Self-employed doctors of medicine are excluded from coverage under the Social Security Act. "Interns" or "residents", as doctors in training, upon completing their course of in-hospital training would, in the main, become self-employed doctors. They would thereafter, as long as they remained in private practice, be exempt from taxation under the Social Security Act, as it is presently constituted.

The span of most residency programs is from one to four years. It is most difficult to accept an interpretation of the statute which would result in exemption of the medical graduate for his first year of in-hospital training and during his entire professional life as a self-employed physician, and yet include him within the scope of the Social Security Act for the interim period of his residency.

The imposition of a tax on the "resident" who is in his second or subsequent year of in-hospital training as contrasted to exemption from taxation of the medical graduate who enters private practice after one year of in-hospital training would be discriminatory. The Court does not believe that Congress intended to differentiate between the medical graduate who desired, in the further-

ance of his professional education, to proceed beyond a single year of in-hospital training and one who did not.

The Court's attention has been drawn to § 3121(b)(6)(C)(iv) of the Code, which provides an exemption from Social Security for service performed in the employ of the United States:

> "by any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of the hospitals of the Federal Government; 5 U. S. C. sec. 1052)."

Section 1052 of Title Five, which is incorporated by reference into the foregoing statutory provision, reads:

> "The Classification Act of 1949, as amended, [and extended], shall not apply to student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, and student occupational therapists, assigned or attached to a hospital, clinic, or medical or dental laboratory operated by any department, agency, or instrumentality of the Federal Government, or by the District of Columbia * * *."

Counsel for the Government points to this reference to both "interns and residents-in-training" found in 5 U. S. C. A. § 1052 as evidence of the fact that where Congress has intended to exempt "residents" it has done so by specifically referring to them.

In making this observation counsel has ignored the fact that in the Social Security legislation itself, 26 U. S. C. A. § 3121(b)(6)(C)(iv) the term "intern" alone is used, just as it is used in § 3121(b)(13).

Reference to the legislative history of 5 U. S. C. A. § 1052 is interesting insofar as it discloses Congressional intent with regard to the treatment to be accorded those preparing for the medical professions as part of the Classi-

fication Act. The report of the House Committee on Post Office and Civil Service is set out at 1947 *U. S. Code Congressional Service*, pp. 1554-55. The report refers to the bill as relating to "certain interns, student nurses, and other student-employees of hospitals of the Federal Government."

The clear import of the committee report is an intent that all medical student-employees be given equal treatment. No differentiation is made with regard to the number of years that any individual in the general category has been engaged in a program of medical employment-training. It is worthy of note that although the act applies both to "interns" and "residents-in-training", the committee report uses the term "intern" only, and the legislative history discloses an intent that all medical student-employees be treated as one general category.

There is nothing in the legislative history of 5 U. S. C. A. § 1052 to indicate that Congress intended thereby to change the substance of 26 U. S. C. A. § 3121 (b) (6) (C) (iv). It is reasonable to assume that if Congress intended to broaden the definition of the word "intern" as it existed in the taxing statute since 1939 mention would be made of that fact. The more reasonable presumption is that 5 U. S. C. A. § 1052 was intended to be reflective of the meaning of "intern" as it was used and understood when 26 U. S. C. A. § 3121 (b) (6) (C) (iv) was enacted.

Counsel for the Government has urged that Sections 3121 (b) (6) (C) (iv) and 3121 (b) (13) should be construed *in pari materia*, as they both deal with the same subject matter in the same statute. If the two sections are construed *in pari materia*, then it follows that the exemption of "residents-in-training" in § 3121 (b) (6) (C) (iv) brought about by 5 U. S. C. A. § 1052 should also apply to § 3121 (b) (13).

To construe these sections so as to provide for an exclusion for interns and residents-in-training in Federal Hospitals while limiting the exclusion to "interns" only in non-Federal Hospitals would certainly result in discrimination in the treatment of "residents-in-training" as between the two classes of hospitals.

The evidence indicated that residencies at Veterans Administration Hospitals are often filled by "rotating" residents from a University affiliated hospital for a period of several months. In effect, the resident-in-training is on loan to the Veterans Hospital during part of his training. If we construe the exemptions to the Act as urged by the Government, this would mean that the resident would be covered by the Act while in training at the University Hospital and excluded while in training at the Federal Hospital. The Court does not believe that Congress intended such a result.

> "An intent to discriminate unjustly between different cases of the same kind is not to be ascribed to the legislature. It is not to be presumed that the legislature intended to make a distinction which would convict it of an unaccountable capriciousness on the subject. Hence, where the legislature has clearly laid down a rule for one class of cases, it is not readily to be supposed that, in the same act, a different rule has been prescribed for another class of cases within the same reason as the first. Where the language of a statute is ambiguous, the courts will strive to avoid an interpretation imputing a design to distinguish between cases upon a course of reasoning to (sic) unsubstantial and too finely drawn for the regulation of human action, or producing arbitrary or incongruous results, or an anomalous, capricious, or senseless distinction or discrimination, or an unequal operation generally. Indeed, nothing but clear and unmistakable language will warrant a court in a construction which will produce the unequal operation of a statute.

> *Hence, unless it can be clearly shown that there is some statutory provision requiring a distinction to be made between the rights of one class of persons or entities and those of another, the courts will, if possible, give such construction to the statute as will place both on an equal footing.* * * *" (Emphasis added.) 50 *Am. Jur.*, 380, 381, Statutes, § 372.

It is the Court's finding that the exemption from the Social Security Act for "interns" as set forth in § 3121(b)(13) applies to all medical graduates engaged in a program of in-hospital training, without regard to the year of training, and includes that group which are now known and which were then known as "residents" or "residents-in-training" within the medical profession in the year 1939.

Now coming to the second contention of plaintiff:

> "That the modest subsistence allowance given to the medical school graduates were gifts or gratuities granted in order to aid their education and training and did not constitute wages within the meaning of Sections 3101 and 3111, Title 26 U. S. C. A."

Although the Court's conclusion on the issue of exemption renders this question academic, the Court believes that it is of sufficient importance so that it should be answered.

It is the plaintiff's contention that the doctor-trainees, interns or residents, are not employees of St. Luke's Hospital for the purposes of the Federal Insurance Contributions Act, and that the subsistence allowance paid them is not remuneration for employment. The Court is of the opinion that this contention by the plaintiff is not well taken.

Section 3121(d) of the Internal Revenue Code of 1954, which is substantially the same as § 1426(d) of the Internal Revenue Code of 1939, defines an employee as any individual who, under the usual common law rules applicable in determining the existence of an employer-

employee relationship, has the status of an employee. If the relationship of employer-employee exists, it is immaterial how the parties themselves describe the relationship. Treasury Regulations on Employment Tax (1954 Code), Sec. 31.3121(d)-1(A)(3); Treasury Regulations 128, Sec. 408.204(a).

This general statutory language has been amplified by Treasury Regulations, Sec. 31.3121(d)-1(C)(2), which provides:

> "Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work, to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. * * *"

Section 408.204(c) of Treasury Regulations 128 is substantially the same.

The Supreme Court has indicated that this language is to be broadly construed in keeping with the basic

purpose of the Social Security Act. *United States v. Silk*, 331 U. S. 704 (1948).

The residents in training, although in the hospital for the purpose of receiving additional education, render a service for the compensation which they receive. Their compensation, whether listed as a stipend or subsistence allowance, was paid to them by the hospital under a written agreement which the resident-in-training entered into with the hospital at the time that arrangements were made for him to serve his residency. The agreements provide generally that the resident is prohibited from engaging in any other work and that he will be subject to the rules and regulations of the hospital. His hours of services are designated by the hospital. The hospital furnishes food, lodging, uniforms, laundry service, and a stipend or subsistence allowance. In addition, the hospital provides him with Blue Cross Insurance, group life insurance, and a 2-week paid vacation.

The evidence indicated that the average amount paid at St. Luke's Hospital to a resident currently ranges from $200 to $325 a month. The amount of the stipend or subsistence allowance paid would not be sufficient to attract the medical school graduate to the institution, without the factor of the in-hospital medical training which was to be received during his stay at the hospital. The evidence, however, also indicated, by reason of the shortage of interns and residents-in-training as compared to the number of hospital openings, that in some instances at other hospitals residents were being offered as much as $6,000 to $7,000 a year, this certainly being more than a subsistence allowance.

The evidence indicated that although a resident was in a hospital for the purpose of further training in a medical specialty, his services in the hospital were needed

and required in order to more fully fulfill the obligation of the hospital to the patients confined there. The amounts paid to residents are in anticipation of the hospital obtaining their services so that it can adequately provide competent medical and hospital care for its patients.

The residents and interns perform services on behalf of patients of the hospital at the direction of the staff physicians. Medical functions which they perform are subject to supervision of the medical staff of the hospital. Although the supervision is done directly by the medical staff and staff physicians, the hospital, operating through the medical staff, has established rules and regulations covering the services of residents and retains the right to discharge the resident for failure to comply with the established rules. Personnel policies and their enforcement are considered an administrative matter at plaintiff hospital.

The hospital under the doctrine of respondeat superior has been held responsible and liable to third persons for the torts committed by residents. *Klema v. St. Elizabeth's Hospital*, 170 Ohio St., 519 (1960).

By reason of all the foregoing, the Court is of the opinion that a resident is an employee of the hospital; that he would be subject to the provisions of the Social Security Act were he not exempt from the Act by reason of the exclusionary provisions of 26 U. S. C. A. § 3121 (b) (13).

The Court finds that 26 U. S. C. A. § 3121 (b) (13) excludes from coverage under the Social Security Act all medical graduates engaged in a program of in-hospital training, whether they are "interns" or "residents", and that accordingly the plaintiff in this action is entitled to prevail. Judgment for plaintiff in the sum of $19,301.39 with interest from March 25, 1959.

This memorandum is adopted as Findings of Fact and Conclusions of Law, in accordance with Rule 52, Federal Rules of Civil Procedure.

United States District Judge.

December 17, 1962.

JUDGMENT OF THE UNITED STATES DISTRICT COURT.

(Filed Dec. 18, 1962.)

The Court, upon consideration, hereby finds for the plaintiff in the amount of $19,301.39 with interest from March 25, 1959;

IT IS, THEREFORE, ORDERED that the plaintiff herein recover from the defendant the sum of Nineteen thousand three hundred and one and 39/100 ($19,301.39) Dollars with interest from March 25, 1959.

BEN C. GREEN,

United States District Judge.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

(Decided June 18, 1964.)

Before: MILLER, PHILLIPS and EDWARDS, Circuit Judges.

EDWARDS, Circuit Judge. Plaintiff-Appellee—a Cleveland hospital—filed suit in the United States District Court for the Northern District of Ohio to recover $19,301.39 from Defendant-Appellant, United States of

America. This amount represents Federal Insurance Contributions Act (Social Security) taxes and interest thereon assessed against the hospital and paid by it under protest. The assessment was based upon the employment by the hospital of "residents." The hospital claimed these residents were "doctors-in-training" and as such were exempt under an amendment to the Federal Insurance Contributions Act which, in its terms, exempted "interns" from the statutory definition of "employment."

The language of the exemption relied on by the hospital follows:

> "(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;" Title 26 U. S. C. § 3121(b)(13).

The basic facts were stipulated. The most pertinent portion of them we set out below:

> "The taxpayer filed a timely claim for refund of the additional employment taxes and interest paid by it in the sum of $19,301.39 which subsequently was denied by the Commissioner of Internal Revenue prior to the commencement of this action. Such additional taxes were computed upon the allowances made by the taxpayer to those graduate physicians who, having completed a year of internship, were taking their second year or a subsequent year of in-hospital training in one of the approved programs conducted by St. Luke's Hospital for training in a medical specialty."

At the trial before a Federal District Judge the hospital produced a number of doctor witnesses who testified

to the fact that since 1939, when Congress exempted "interns," that the program of use of "residents" had expanded rapidly. The tenor of their testimony was to the effect that interns of a one-year variety and "residents-in-training" for two to four years were all doctors-in-training and should, for purposes of exemption from the Act, be considered "interns." The District Judge gave an accurate summary of this testimony:

> "Plaintiff's principal witnesses were men of the medical profession. They testified that at or around the year 1939 the ordinary and accepted meaning of the word "intern" was the same as the ordinary and accepted meaning of the word "resident," or "resident-in-training," and that they were both understood to be graduates of a medical school who were in residence in the hospital for additional education and training without regard as to whether it was the first or subsequent years of such training; that the generally accepted meaning of the word "intern" included a "resident" or "resident-in-training." These doctors admitted that within the medical profession a distinction was made between an intern and a resident (in 1939 plaintiff hospital had different applications for the positions of intern and resident), but stated that the public failed to have, or understand, that delineation." *St. Luke's Hospital Association of Cleveland, Ohio v. United States*, 212 F. Supp. 387, 390 (N. D. Ohio 1962).

The government called one witness, a Doctor Weiskotten, who testified in relation to the situation prevailing in 1939 or earlier:

> "Q. Do you have, Doctor, an opinion as to what was the generally accepted meaning of the word "intern" when used in the context of a hospital internship?
>
> "A. Yes. That is, the internship was an approved educational and experience program to better prepare

a man to initiate the practice of medicine following his four years as a student in a medical college.

"Q. Doctor, do you have an opinion as to what was the generally accepted definition of the word "resident" when used in the context of the medical field?

"A. Yes. A resident was a man who took special hospital training of varying periods of time following an internship, to prepare him as a specialist in a particular field of medicine.

* * *

"Q. Doctor, in your opinion, was there a sharp distinction in 1939 between those persons referred to as "interns," and those persons referred to as "residents"?

"A. Oh, yes.

"Q. Would you please explain, once again, what that distinction was?

"A. I believe, as I stated before, that the internship was a training period, usually of one-year duration, following the four-year course in a medical school, to prepare a man to initiate a career in medicine. Now he might initiate that career in medicine by simply going out into independent practice, or he might initiate that career in medicine thereafter by taking a residency and becoming a specialist.

"Q. In other words, what you are saying is that the internship was a pre-condition to the general practice of medicine?

"A. To anyone who entered into the practice of medicine."

The District Judge gave a judgment for the hospital. His careful and well-reasoned opinion argued that the word "intern" in the applicable statute should be construed as encompassing "residents-in-training." He based this conclusion first on the fact that although the terms "intern" and "resident" had totally different meanings in medical and hospital circles in 1939 when the amendment

excluding interns was passed, this was not true in relation to the usage of the terms in the public vocabulary. And he held that it was the congressional intent to apply the public rather than the specialized meaning.

His opinion indicates that he was influenced to this conclusion in part by two amendments affecting the Federal Insurance Contributions Act passed in 1947 which exempted from the FICA definition of "employment" services performed by certain individuals.

The language he referred to follows:

> "(iv) by any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government; 5 U. S. C., sec. 1052);" Title 26 U. S. C. § 3121 (b) (C) (iv).
>
> "§ 1052. *Student-employees exempt from Classification Act of 1923.*
>
> "The Classification Act of 1923, as amended and extended, shall not apply to student nurses, medical or dental interns, residents-in-training, student dietitians, student physical therapists, and student occupational therapists assigned or attached to a hospital, clinic, or medical or dental laboratory operated by any department, agency, or instrumentality of the Federal Government, or by the District of Columbia, and any other student-employees, assigned or attached to any such hospital, clinic, or laboratory primarily for training purposes, who may be designated by the head of such department, agency, or instrumentality, or by the Commissioners of the District of Columbia, as the case may be, with the approval of the Civil Service Commission." Title 5 U. S. C. § 1052.

Noting that the terms "intern" and "resident-in-training" in § 1052 were used separately, he nonetheless rea-

soned that both were included under the single term "intern" in the reference language of § 3121(b)(C)(iv).

He also noted that doctors in private practice were exempted and stated:

> "The span of most residency programs is from one to four years. It is most difficult to accept an interpretation of the statute which would result in exemption of the medical graduate for his first year of in-hospital training and during his entire professional life as a self-employed physician, and yet include him within the scope of the Social Security Act for the interim period of his residency." *St. Luke's Hospital Association of Cleveland, Ohio v. United States*, supra at 393.

The District Judge also held that the amounts paid by the hospital to its residents-in-training were wages within the meaning of the Federal Insurance Contributions Act and not "gratuities" as contended by plaintiff-appellee hospital.

Defendant-appellant, United States of America, appealed to this Court claiming that the District Judge's decision represented an erroneous interpretation of the language of the FICA quoted above.

With the District Judge's last finding we are in agreement. Residents on this record clearly perform very valuable services, and the sums paid them are "wages" and are not "gratuities." See *United States v. Silk*, 331 U. S. 704 (1947).

As to the interpretation of the 1939 amendment, we are unable to agree—albeit we recognize that reasonable minds could easily differ on issues of interpretation as finely spun as these.

It is clear to us from this record that there have been major changes in the nature and extent of the resident-in-training programs between 1939 and the present.

But we agree with the District Judge that proper rules of interpretation require us to view the language of this 1939 statutory amendment in the light of 1939 facts and meanings. *Platt v. Union Pacific R. R. Co.*, 99 U. S. 48, 64 (1878); *Hartford Electric Light Co. v. Federal Power Commission*, 131 F. 2d 953, 964 (C. A. 2 1942), *cert. denied*, 319 U. S. 741 (1942).

In 1939 many prominent medical schools required a period of internship for one year before they would confer the degree of Doctor of Medicine. The stipulation of facts in this record recites on this point:

> "6. That in 1939, the following listed medical schools required a period of internship before conferring the degree of Doctor of Medicine upon persons who had completed the prescribed course of study:
>
> "University of California Medical School; College of Medical Evangelists; University of Southern California School of Medicine; Stanford University School of Medicine; Loyola School of Medicine; Northwestern University Medical School; University of Illinois College of Medicine; Louisiana State University Medical Center; Wayne University College of Medicine; University of Minnesota Medical School; Duke University School of Medicine; University of Cincinnati College of Medicine; Marquette University College of Medicine; University of Manitoba Faculty of Medicine; Dalhousie University Faculty of Medicine; McGill University Faculty of Medicine; University of Montreal Faculty of Medicine. * * *"

In 1939 many states required a period of one year's internship before they would admit a doctor to practice medicine in their jurisdictions:

> "Alabama; Alaska; Delaware; District of Columbia; Idaho; Illinois; Iowa; Louisiana; Michigan; New Hampshire; New Jersey; North Dakota; Oklahoma;

Oregon; Pennsylvania; Puerto Rico; Rhode Island; South Dakota; Utah; Vermont; Washington; West Virginia; Wisconsin and Wyoming."

Plaintiff hospital itself in 1939 had separate applications based on different qualifications for the posts of "intern" and "resident."

The "Application for Internship" called for listing the premedical school and the school of medicine and for a letter of recommendation from the Dean of the latter.

The "Application for Assistant Residency" (in addition to these same requirements) also required listing the hospital at which the applicant's internship had been served and the dates of the internship and a letter of recommendation "from the superintendent of the hospital where you are serving your internship."

In our view the term "intern" as used and understood by doctors and hospitals in 1939 generally referred to a medical student who was seeking a year of hospital training in order to complete his requirements for a medical degree and admission to practice.

The term "resident" as used by doctors and hospitals in 1939 referred to a graduate physician, licensed to practice medicine, who served on the staff of the hospital. He might be seeking further training for use ultimately in private practice, or he might be a regular staff physician.

It is clear, however, from this record that between 1939 and the date of hearing on this case some major developments have affected these terms.

The one-year internship is no longer a requirement either for a medical degree or for a license to practice medicine. And there has developed a broad program for training of physicians in specialized branches of medicine leading to examination and certification by specialty boards. The doctors involved in this program are the

"residents-in-training" whose exemption or coverage under Social Security is the subject of this dispute.

Thus, since 1939 the distinction between interns and residents has been blurred in two respects—interns at present generally are graduate doctors and entitled to practice medicine—residents-in-training are perhaps more definitely regarded as still in training status than was true of their resident predecessors in 1939. Yet the basic description of the "intern" program (from 1939 through 1961) has been an educational experience in hospital service for one year immediately following four years of medical school. And the basic qualifications stipulated for a residency is and has been (1939-1961) satisfactory completion of a one-year internship.

Defendant United States of America's first exhibit in this case is St. Luke's Hospital booklet entitled *Intern, Resident Programs 1960-61*. From this exhibit we quote portions which show the distinctions which plaintiff hospital was making in the years noted as to the very words in controversy in this appeal.

In the section of the booklet entitled "Rotating Intern Program" we find the following:

> "Appointment Procedure
>
> "Saint Luke's Hospital offers twenty-four one-year rotating internships, with service beginning on June 25 and ending June 25 of the following year. This hospital participates in the National Intern Matching Program.
>
> "Selection of appointees to internships is made by the superintendent of the hospital in conference with and upon the advice of the house staff committee of the medical staff and the approval of the medical council. All appointments are confirmed by the executive committee of the Board of Trustees.
>
> "Appointments are made after completion of the

junior year of the medical course. Interns are selected on the basis of information supplied in the application, scholastic records, letters of recommendation and, if possible, personal interview."

"* * *

"Educational Objectives and Methods

"It is the purpose of the internship to provide a well-rounded educational opportunity. The rotation is designed to allot an appropriate amount of time on each of the major services with a minimal amount of interservice shifting and few short-term services. The schedule is arranged primarily for the benefit of the interns, not for the convenience of the staff or the administration. The intern's preferences are taken into consideration in planning the rotation. Since more than one-half of the interns desire to remain at Saint Luke's for an approved residency training, each of them is asked to state the specialty or specialties in which he is interested. His first assignment is then made to the appropriate service, if possible. In this manner he has opportunity to become acquainted with that service, and the staff of the service can evaluate him before it is time to make the residency appointments."

In the section of the booklet entitled "The Resident Programs," we find:

"Saint Luke's Hospital offers a training program for residents in each of the following specialties: anesthesiology, general surgery, internal medicine, obstetrics and gynecology, ophthalmology, orthopedic surgery, otorhinolaryngology, pathology, pediatrics and radiology. All of these residencies are approved by the Council on Medical Education and Hospitals of the American Medical Association and by the respective specialty boards.

* * *

"Advanced training in the various specialties is available to those who have completed one year of

internship. In selection of appointees for these positions, preference is given those who have served as interns at Saint Luke's Hospital and those who are advancing in the residency sequence. Graduate interns from other hospitals are eligible for appointment, provided they have had training equivalent to that offered by Saint Luke's Hospital."

It is also interesting to note that the tax problems of Ohio hospitals concerning "interns" and "residents" have been before the Ohio Supreme Court. *Doctor's Hospital v. Board of Tax Appeals,* 173 Ohio St. 283, 181 N. E. 2d 702 (1962). In its opinion in this case the Ohio Supreme Court defined the terms in this fashion:

> "An intern is a medical student who has completed his medical school course; he may or may not have been licensed as a physician at the time of beginning his internship. His internship lasts usually one year, and during such internship he assists the hospital in the care of patients, without a charge being made to the patient for such services.
>
> "A resident-in-training is a licensed physician who has completed his medical school course and his internship and who becomes associated with a hospital for a period usually of three years for the purpose of advanced study looking toward specialization in the practice of medicine. During this period, he also assists the hospital in the care of patients, without charge to the patient therefor." *Doctor's Hospital v. Board of Tax Appeals,* supra at 283-284.

While these definitions are certainly not controlling as to our interpretation of a federal statute, they seem entirely consistent with the record in this case.

We recognize, of course, that in all the above we have concerned ourselves with the definitions of the word "intern" as it was and is used by doctors and hospitals, and

that it was this usage which the Federal District Judge rejected in favor of a more general definition.

There is no doubt that "intern" does have an older and more general meaning found in dictionaries, which would include any person residing in an institutional setting for educational or training purposes. Thus, in its older and less specific meaning, the word "intern" was the opposite of "extern."

Contrary, however, to the view of the matter taken by the Federal District Judge, we believe that in 1939 Congress was thoroughly familiar with and had every intention of using the newer, the more specific, and by then the more common definition of the word "intern."

First, the language involved was embodied in an exception to the definition of employment. Thus it was specifically addressed to prospective "interns" and to the employers of "interns," i.e. the hospitals of the United States, who were, as indicated above, thoroughly familiar with the newer and more technical definition.

Congressional committees which draft amendments to federal legislation acquire a definite expertise which certainly extends in our opinion to knowing the difference between an intern and a resident, or between an intern and a resident-in-training.

A House Ways and Means Committee Report dealing with identical language in the Social Security Act[1] to that which we construe herein said:

> "Paragraph (13) excepts service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in such a school chartered or approved pursuant to State law; and service performed as an intern (as distinguished from a

[1] Title 42 U. S. C. § 410(a)(13).

> resident doctor) in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law." H. R. Rep. No. 728, 76th Cong., 1st Sess. 49 (1939).

While here in 1939 a Congressional Committee was using the term "intern" in contradistinction to the term "resident," as the "resident-in-training" language came into greater use, we find Congress employing this term (along with the term "intern") with obvious understanding of their meaning in medical and hospital usage.

In 1947 an amendment to the Classification Act of 1923 was adopted which provided in so many words that it should "not apply to student nurses, medical or dental interns, residents-in-training," [2] etc.

Nor can we agree with the District Judge that the parallel statutory reference [3] to Section 1052 encompasses the term "resident" in the term "intern." On the contrary we believe that the general and inclusive terminology is that of "students-in-training."

There is, of course, a principle of statutory construction which suggests that wherever possible interpretations of statutes should be avoided which produce absurd or unreasonable results. *United States v. American Trucking Associations, Inc.*, 310 U. S. 534; 50 Am. Jur., Statutes, § 377 at 385. Appellee hospital argued successfully before the District Judge and vigorously before us to the effect that to require coverage of residents-in-training was unreasonable because it would require them to pay for some-

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[2] Title 5 U. S. C. § 1052.

[3] "(iv) by any individual as an employee included under section 2 of the Act of August 4, 1947 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government; 5 U. S. C., sec. 1052);" Title 26, U. S. C. § 3121(b)(C)(iv).

thing which under no circumstances would ever be of any benefit to them.

At oral argument certain hypothetical questions were posed from the bench to counsel for the hospital and the government to which answers have subsequently been supplied by each and are included in the appendix to this opinion. It is apparent from these answers that Social Security coverage does have a definite beneficial value in terms of insurance for the married residents-in-training in the benefits provided for himself in terms of disability and to his family in the event of his death. It also is obvious from the figures supplied by the government response that far more doctors achieve full and permanent coverage under Social Security than is commonly thought to be the case. While such facts are by no means determinative of the statutory interpretations with which we are dealing, they serve to rebut the suggestion that coverage for the persons who are the subject matter of this dispute is absurd.

Finally, in dealing with the beneficent purposes of the Social Security Act, this court generally favors that interpretation of statutory provisions which calls for coverage rather than exclusion. *Brown & Bartlett v. United States,* Decided April 16, 1964 — F. 2d — (C. A. 6 1964); *Lietz v. Flemming,* 264 F. 2d 311 (C. A. 6 1959).

In all of the above we do not ignore the fact that distinctions between interns and residents-in-training have been substantially reduced in the years since 1939. The resident training program has been greatly expanded and its educational aspects have been greatly enhanced. No doubt these developments lend some weight to the argument for expansion of the intern exemption to cover residents-in-training. It seems clear to us, however, that meeting these changed conditions, if indeed there is war-

rant for doing so at all, is the function of legislation and not that of judicial interpretation.

Reversed and remanded for entry of judgment for defendant United States of America.

APPENDIX "A"

Counsel for Defendant-Appellant, United States of America, forwarded the attached letter in response to the court's questions.

DEPARTMENT OF
HEALTH, EDUCATION AND WELFARE
6401 Security Boulevard
Baltimore 35, Maryland

March 4, 1964

Hon. Louis F. Oberdorfer
Assistant Attorney General
Department of Justice
Tax Division
Washington 25, D. C.

Attention: Mr. Frederick Youngman

Re: St. Luke's Hospital of Cleveland v. United States—(No. 15,393, C. A. 6th) (Your ref: LFO:LAJ:FEY 5-57-2586)

Dear Mr. Oberdorfer:

Thank you for your letter of February 24. The additional copy of the Social Security Handbook you requested is enclosed.

Your letter lists three factual situations, as to each of which the Court of Appeals wishes to know the social security benefits that would accrue to a doctor's survivors. In each situation the doctor will have served a period of years in in-hospital training subject to social security tax,

gone into the private practice of medicine, and then died two years later. In the first situation, the doctor will have served three years in training, in the second, four years, and in the third, seven years. You suggest that we explain what disability benefits would be available in each of these cases if the doctor became disabled, instead of died two years after entering private practice. The answers to the questions presented would depend, in part, upon facts in addition to those suggested by the court. The discussion below will show why:

Survivor benefits are payable to the widow and certain children of an individual if he dies "fully insured" or "currently insured." Generally, an individual is "fully insured" if, *for* each full calendar year after 1950 or after the year in which he attained age 21 (whichever is later) and before the year in which he died he has at least one quarter of coverage, i.e., a calendar quarter in which he has been paid at least $50 in wages or credited with at least $100 in self-employment income. He also must have a minimum of six quarters of coverage. These quarters of coverage can be acquired at any time after 1936. An individual is "currently insured" if he has at least six quarters of coverage *in* the 13 calendar quarter period ending with the quarter in which he dies or becomes entitled to disability insurance benefits. (Sections 213(a) and 214 of the Social Security Act, 42 U. S. C. 413(a), 414).

Applying these definitions in each of the listed cases, the results are as follows: If the doctor dies two years after going into private practice he will not have died "currently insured" because he would have then only five of the last 13 quarters as quarters of coverage. On the other hand, if he dies a year and a half after going into private prac-

tice, he will have died "currently insured" because seven of the last 13 quarters are quarters of coverage.

Whether or not the doctor in each of the listed cases would be "fully insured" when he dies depends upon the year in which he dies and his age at that time. Let us assume that in each case he commenced his residency at age 26, and dies this year, 1964. In the first case he would be 31 at death. He would need nine quarters of coverage, one for each year after 1954 and before 1964. His three years of covered training would have given him 12 such quarters. In the second case he would be 32 at death. He would need ten quarters of coverage, one for each year after 1953 and before 1964. His four years of covered training would have given him 16 such quarters. In the third case he would be 35 at death. He would need 13 quarters of coverage, one for each year after 1950 and before 1964. His seven years of covered training would have given him 28 such quarters. In each case, then, the doctor would have died "fully insured."

Further, the doctor would still have died "fully insured" in the first case if he had been in private practice not two, but five, years. In the second case he would still have died "fully insured" if he had been in private practice eight years; and in the third case, if he had been in private practice 15 years.

When an individual dies "fully insured" or "currently insured" the following benefits will be payable:

1. Monthly benefits to each of his dependent children until the child attains age 18 (if the child becomes disabled before age 18, then for so long as the disability lasts) or sooner marries (section 202(d) of the Act, 42 U. S. C. 402(d));

2. Monthly benefits to his widow so long as she has in her care a child of the individual entitled to child's benefits, unless she remarries (section 202(g) of the Act, 42 U. S. C. 402(g)); and if she remains his unremarried widow, she can again qualify for monthly benefits at age 62 (section 202(e) of the Act, 42 U. S. C. 402(e));

3. In certain cases (and only if the individual died "fully insured"), monthly benefits to his aged dependent parents (section 202(h) of the Act, 42 U. S. C. 402(h));

4. A lump-sum death payment, not to exceed $255 (section 202(i) of the Act, 42 U. S. C. 402(i)).

The amount of such monthly benefits and lump-sum would in each case be computed from the individual's earnings under social security in accordance with a statutory formula (sections 202(d), (e), (g), and (h) and 215 of the Act, 42 U. S. C. 402(d), (e), (g), (h), 415).

For an individual to be entitled to disability insurance benefits for any month it is necessary not only that he be "fully insured," but in addition that he have not less than 20 quarters of coverage during the 40 calendar quarters ending either with the quarter in which that month occurs, or with a subsequent quarter. Thus, in neither the first nor the second situations could the doctor be entitled to disability insurance benefits; in the third he would. Moreover, if he himself became entitled to disability insurance benefits his wife and children also could become entitled to benefits.

To analogize the situations here to commercial insurance, what the doctor would receive in each case would be comparable to the protection given by term insurance: for the duration of the term—which is longer as he engaged for a longer time in employment or self-employment covered under the Act—he and his family are protected.

In presenting the above, we have limited ourselves to the situations presented by the court and by you, which assume that the doctors in question earned social security coverage only while in residency. This assumption overlooks the fact that a large number of doctors serve with the armed forces, during which time they acquire additional quarters of coverage, which in turn increases the protection for their families and themselves.

We quote also from a medical publication, *Medical World News*, of September 15, 1961, entitled "Many Doctors Already Have Social Security," which may be of interest too relative to the extent to which doctors have social security coverage:

> "In the long running controversy over Social Security coverage for doctors, one rather remarkable fact has been generally overlooked: 40 per cent of the nation's working physicians are already on the active rolls. And more than 60 per cent have some credits.
>
> "Many are hospital staff physicians who voted in favor of Social Security coverage for themselves. . . . And they did this even though non-profit institutions are ordinarily excused from participation in the Social Security program. Others are Federal employees, teachers, administrators, or private physicians with part-time salaried positions."

We hope the foregoing will be of assistance to you in answering the questions of the court. If we can be of further service, please let us know.

Sincerely yours,

/s/ HAROLD P. PACKER
HAROLD P. PACKER,
Assistant General Counsel

Enclosure

APPENDIX "B"

Counsel for Plaintiff-Appellee, St. Luke's Hospital Association of Cleveland, Ohio, forwarded the attached letter in response to the court's questions.

(Filed Feb. 24, 1964—Carl W. Reuss, Clerk)

LAW OFFICES OF
THOMPSON, HINE AND FLORY
NATIONAL CITY BANK BUILDING
Cleveland 14, Ohio
CHerry 1-1880

February 22, 1964

Hon. Shackelford Miller, Jr.
Hon. Harry Phillips
Hon. George Edwards

Re: St. Luke's Hospital Association of Cleveland, Plaintiff-Appellee v. United States of America, Defendant-Appellant
United States Court of Appeals for the Sixth Circuit, Case No. 15,393

Honorable Judges:

During the course of oral argument heard on February 18th the Court of Appeals, through Judge Edwards, requested counsel for the parties to submit separate letter responses to the following alternative hypothetical questions:

(1) Assume that a medical school graduate pursues in-hospital training for three years. Assume that prior to his death he becomes married and has one minor child. At the expiration of his in-hospital training he engages in the practice of medicine as a self-employed physician who is exempt from participation in the Social Security Benefit

program. Assume further that he dies at the end of his second year of private practice. What Social Security benefits are applicable and allowable on behalf of the surviving widow and minor child?

(2) Assume the same state of facts as in (1) above except that the medical school graduate pursues five years of in-hospital training.

(3) Assume the same state of facts as in (1) above except that the medical school graduate pursues seven years of in-hospital training.

In order to discuss and answer these hypothetical questions it is necessary to make certain additional and basic assumptions. In this regard we have assumed, as being normal, that the decedent (a) graduated from high school at the age of 18 (b) that he graduated from college at the age of 22 (c) that he attended an approved medical school and graduated at the age of 26, and (d) that he immediately commenced in-hospital training.

We have also assumed application of the Internal Revenue Service determination as made and contested in this case; the same concluding that exclusion from "employment" pursuant to Section 3121 (b) (13) of the F. I. C. A. shall be applied only "to basic (first-year) post-graduate training" (see Internal Revenue Service letter dated June 16, 1958, Plaintiff Exhibit A, R. 56b-58b).

The pertinent Social Security benefits provided under the Act may be summarized as follows:

(1) *Old Age Insurance Benefits.* The conditions of entitlement to such benefits, whether individual, wife's or child's, as provided for in Regulation Sections 404.303 et seq. (Subpart D of Regulations No. 4 of the Social Security Administration—Commerce Clearing House Unemployment Insurance Reporter, Volume I, Sections

13,105 et seq.) require that the applicant shall have attained age 65 and have an insured status. Under the assumed facts, no Social Security benefits of these types would accrue in any of the hypothetical situations posed by the Court.

(2) *Mother's (Widow) Insurance Benefits.* Are covered by Regulation Sections 404.325, 404.326 and 404.327 (C. C. H. Sections 13,149, 13,151 and 13,153). This benefit must be considered in answer to the Court's hypothetical questions. As provided in Section 404.327 the benefit is computed as a monthly "amount equal to three-fourths of the primary insurance amount of the deceased individual."

(3) *Child's Insurance Benefits.* Are Covered by Regulation Sections 404.312 through 404.318 (C. C. H. Sections 13,123-13,135). This benefit would also amount to three-fourths of decedent's primary insurance amount (Section 404.314).

(4) *Lump-Sum Death Payments.* This benefit is computed as three times the primary insurance amount, but in no case exceeds $255.00 (Section 404.343).

The following additional Regulation Sections must be considered in evaluating "eligibility" and applied in order to answer the Court's hypothetical questions:

Subpart B of the Regulations, Section 404.101 et seq. (C. C. H. Section 13,011 et seq.) discusses "fully" and "currently" insured status as dependent upon the individual having acquired sufficient "quarters of coverage."

Section 401.103(b)(1) specifically provides that an individual must be paid $50.00 or more during a quarter to be credited with a "quarter of coverage" (C. C. H. Section 13,015).

Section 401.103(f) provides that a quarter of coverage is acquired as of the day in that calendar quarter on which the wages are paid or earned (C. C. H. Section 13,015).

Sections 404.108 and 404.109 detail the requirements for determination of the "fully insured" status of an individual, after July, 1961. To be "fully insured" an individual needs one quarter of coverage for each year elapsing after 1950 or after the year in which he attained age 21, if later, and before the year in which he died. In all instances at least six quarters of coverage are required (C. C. H. Sections 13,022 and 13,022A).

Section 404.114 defines the "currently insured" status. A currently insured individual is one who has acquired not less than six quarters of coverage during the 13-quarter period ending with and including the quarter in which he died (C. C. H. Section 13,027).

Answer to Hypothetical Question No. 1

It appears clear that the Old Age Insurance Benefits are inapplicable in decedent's case. However, the possibility of allowance of Mother's, Child's and Lump-Sum Death Benefits (as dependent upon either a "currently" or "fully" insured status) must be examined and discussed.

We submit the hypothetical facts establish that:

1. Decedent had no coverage during his first year of in-hospital training.

2. Thereafter, and because of contributions for six quarters, he acquired a "currently insured" status by the end of two and one-half years of training. This status terminated at the end of one and three-quarter years (seven quarters) of his private practice as a physician.

3. During his second and third years of in-hospital

training he accumulated eight quarters of coverage. This entitled him to a "fully insured" status for eight years after he attained 21 years of age. When he became 29 years of age, depending upon his birth date, he was either in his last year of in-hospital training or starting his first year of private practice.

4. When he completed two years of private practice, and died at age 31, he had neither a "currently insured" nor a "fully" insured status.

5. Under the first hypothesis decedent's widow and child are not entitled to any Social Security benefits.

Answer to Hypothetical Question No. 2

Under the facts assumed with respect to this alternative hypothetical question (a total of five years in-hospital training, with contributions having been made during four years) the decedent's widow and minor child would be entitled to the Lump-Sum Death, Mother's and Child's Benefits, the allowances to be computed on his "primary insurance amount." We arrive at this conclusion because decedent would have acquired sixteen quarters of coverage on the basis of contributions made during the last four years of his in-hospital training; these sixteen quarters of coverage to be carried forward (from age 21) and applied for "fully insured" coverage during the two-year period of private practice. This "fully insured" status must be recognized, although his "currently insured" status terminated at the same time mentioned in our answer to hypothetical question No. 1.

Answer to Hypothetical Question No. 3.

Essentially, our answer to hypothetical question No. 2 also applies to the Court's third hypothesis. Since the period of contribution is extended an additional two years, decedent's "fully insured" status is also extended. In this situation the widow and minor child would likewise be

entitled to applicable Lump-Sum Death, Mother's and Child's Benefits.

We are mailing duplicate copies of this letter to Mr. Youngman, of counsel for Defendant-Appellant, and also transmitting additional file copies to Mr. Reuss.

Respectfully submitted,

/s/ TIMOTHY F. MCMAHON
TIMOTHY F. MCMAHON

/s/ WILLIAM H. WALLACE
WILLIAM H. WALLACE
Of Cousel for Plaintiff-Appellee,
St. Luke's Hospital Association

/mp

cc: FRED E. YOUNGMAN, Esq.
CARL W. REUSS, Esq.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS

(Filed June 18, 1964.)

Appeal from the United States District Court for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed and remanded for entry of judgment for defendant United States of America.

No costs awarded. Rule 23(4).

Approved for entry:

/s/ GEORGE EDWARDS,
United States Circuit Judge

STATUTES INVOLVED.

Int. Rev. Code of 1954, § 3121(b)(13) (formerly Int. Rev. Code of 1939 § 1426(b)(14)):

(b) *Employment.*—For purposes of this chapter, the term 'employment' means any service performed after 1936 and prior to 1955 which was employment . . . under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 . . . except that, in the case of service performed after 1954, such term shall not include—

* * * * *

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

TABLE OF CONTENTS.

Introduction and Interest of Amicus Curiae	1
Summary of Argument	3
Reasons for Granting the Writ	3
Conclusion	5

In the Supreme Court of the United States

OCTOBER TERM, 1964.

No. 579.

ST. LUKE'S HOSPITAL ASSOCIATION OF CLEVELAND, OHIO, OF THE METHODIST CHURCH,
a non-profit corporation,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

BRIEF OF OHIO HOSPITAL ASSOCIATION AS AMICUS CURIAE.

INTRODUCTION AND INTEREST OF AMICUS CURIAE.

The written consent of counsel for the petitioner and respondent to the filing of this brief *amicus curiae* has been obtained and filed in letter form with the Clerk of the Court.

The Ohio Hospital Association is incorporated under the laws of Ohio as a non-profit, educational corporation. Its membership consists of 214 hospitals located throughout Ohio. The purpose of the Ohio Hospital Association is to promote the welfare of the people of this state by helping to provide hospital and related health service institutions of the highest possible quality.

The interest of the Ohio Hospital Association in this case arises from the fact that many of its member hospitals, in addition to providing facilities for patient care,

conduct programs of in-hospital training for medical school graduates which are similar to the program maintained by the petitioner.

The current financial burden resulting from the decision of the United States Court of Appeals for the Sixth Circuit upon both the member hospitals and their residents-in-training is substantial. Moreover, potential liabilities exist for several past years. In some cases claims for refund have been filed annually on behalf of member hospitals seeking recovery of Social Security employment taxes collected by the government with respect to residents-in-training. In other cases liabilities for past years have been held in abeyance pending final disposition of this case by the Supreme Court.

The budgetary and over-all financial interests of the member hospitals are vitally affected by the questions raised by petitioner. It is in their behalf that this *amicus* brief is respectfully submitted.

SUMMARY OF ARGUMENT.

In agreement with the arguments advanced by the petitioner in its Petition for Certiorari, the Ohio Hospital Association submits that the United States Court of Appeals for the Sixth Circuit committed manifest and prejudicial error in reversing the decision of the District Court. Therefore, it seems unnecessary to repeat such arguments herein. However, *amicus curiae* feels that further emphasis must be placed upon the importance of the question presented to this Court by the Petition for Certiorari and the widespread effect that this Court's review of the question will have upon hospitals and residents-in-training throughout the country.

REASONS FOR GRANTING THE WRIT.

The scope and impact of the issues brought before the Court in this case are nation-wide. Petitioner accurately observed that the correct interpretation of Int. Rev. Code of 1954, § 3121(b)(13) is of great importance to all hospitals throughout the United States and to large numbers of medical school graduates who are and will be engaged in programs of in-hospital training.

The American Medical Association Directory Report Service provides quarterly tables of physicians' population in the United States by state and county, specialty, age and area of professional interest. This Directory lists 8,646 interns and 25,421 residents in hospital service, exclusive of physicians in the service of the United States, physicians who are temporarily out of the country and physicians whose addresses are temporarily unknown. The figure given for residents represents an increase of nearly 10,000 doctors in this category since 1953. Continued growth and expansion of residency programs is not

only to be anticipated, but is absolutely essential to the health and welfare of the country.

Members of the Ohio Hospital Association provided facilities for the training of 553 interns and 1,601 residents in 1964. In this state alone, residents-in-training represent 13% of all active physicians.

Contrary to the representations contained in correspondence submitted to the United States Court of Appeals by counsel for the respondent (Petition for Certiorari, App. p. 49) which indicated that "40% of the nation's working physicians are already on the active rolls," only 17% of the nation's active physicians, excluding interns and residents-in-training, are currently entitled to full participation in the Social Security Program. In Ohio, only 16% of the physicians are engaged in some form of salaried practice which makes them currently eligible for Social Security retirement benefits. Furthermore, a recent survey conducted by the Ohio Hospital Association established that during the five years preceding June 1, 1964, the family of only one resident-in-training received Social Security death benefits. To cover this rare instance members of the Ohio Hospital Association and their residents-in-training have been assessed approximately $2,275,000.00 during the same five year period. During the past 10 years assessments have amounted to nearly $4,000,000.00. These tremendous expenditures must be evaluated in light of the fact that many hospitals carry adequate group insurance policies in order to provide substantial death benefits in case of the death of any of their interns or residents.

The widespread interest and concern in the outcome of this case and its ultimate effect on the ever increasing cost of hospital care is further evidenced by a recent article

appearing in a national magazine in which Thomas D. Griffiths, Executive Director of the Cleveland Hospital Council, was quoted as saying:

> "The doctor is being taken advantage of, and the hospital is being asked to contribute needed funds to no purpose. We oppose the Social Security Administration's attempt to take great gulps of hospitals' and doctors' funds without having to face the prospect of returning the bulk of these funds as benefits at some later date." [1]

CONCLUSION.

This case merits final review by the Supreme Court since it presents questions of great importance to hospitals and residents-in-training throughout the country involving the interpretation and application of the Social Security Laws. It is therefore urged that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

CHARLES E. CONNOR,
Counsel for Amicus Curiae.

CONNOR, CONNOR & BENNETT,
Of Counsel.

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[1] *Riss*, Oct., 1964, pp. 121, 122.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 579

ST. LUKE'S HOSPITAL ASSOCIATION OF CLEVELAND, OHIO, OF THE METHODIST CHURCH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 31-45) is reported at 333 F. 2d 157. The opinion of the district court (Pet. 13-31) is reported at 212 F. Supp. 387.

JURISDICTION

The judgment of the court of appeals (Pet. 55) was entered June 18, 1964. The petition for a writ

of certiorari was filed October 12, 1964, pursuant to an extension of time previously granted by Mr. Justice Stewart. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED

Whether the provisions of Section 1426(b) (14) of the Internal Revenue Code of 1939 and Section 3121 (b) (13) of the Internal Revenue Code of 1954, excluding from "employment" with respect to which the federal social security tax is imposed "service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law," may be extended also to exclude from "employment" with respect to which the tax is imposed services performed as a resident physician in the employ of such hospital by an individual who has completed an approved internship and is taking further in-hospital medical training in an approved medical specialty program conducted by such hospital.

STATUTES INVOLVED

Sections 1426(b) (14) of the Internal Revenue Code of 1939 and Section 3121(b) (13) of the Internal Revenue Code of 1954 are set out in the Appendix, *infra*, pp. 7-9.

STATEMENT

This action was brought in the District Court for the Northern District of Ohio, by St. Luke's Hospital

Association of Cleveland, Ohio to recover sums paid as taxes (both employer's contributions and employee's contributions) under the Federal Insurance Contributions Act.[1] (R. 4a-8a).[2] The facts were stipulated in part by the parties in the district court (R. 11a-13a), supplemented by documentary exhibits and oral testimony introduced at the trial.

The taxpayer, a non-profit corporation, operates a general hospital in Cleveland, Ohio, with a program of in-hospital training for medical school graduates complying with the standards established by the Council on Medical Education and Hospitals of the American Medical Association. All medical school graduates in training at St. Luke's Hospital during the relevant periods had previously completed a four-years' course in a medical school chartered or approved pursuant to State law. The taxpayer filed employment tax returns under the Federal Insurance Contributions Act for the period in dispute—January 1, 1953, through June 30, 1958—but did not include in such returns any amounts on account of compensation paid to medical school graduates taking in-hospital training under programs operated by the Hospital. The District Director assessed additional F.I.C.A. taxes, both employer's contributions and em-

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[1] Internal Revenue Code of 1939, Secs. 1400, *et seq.*, and Internal Revenue Code of 1954, Secs. 3101, *et seq.*, derived from Title VIII, Sec. 801, *et seq.*, of the Social Security Act, c. 531, 49 Stat. 620, 636, as amended.

[2] Record references herein are to the printed pages of the Appendix to the brief filed by the United States, defendant appellant, in the Court of Appeals.

ployee's contributions, against the taxpayer in the sum of $16,722.42 for the quarters involved, based upon amounts paid to medical school graduates who had completed internship and were taking further in-hospital training in certain specialty programs conducted by the Hospital. The assessments did not include amounts paid to medical school graduates taking their regular one-year internship after graduation because Section 1426(b) (14) of the Internal Revenue Code of 1939 and Section 3121(b) (13) of the Internal Revenue Code of 1954 specifically exclude from the tax "service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law."

In its refund claim and in this suit (both before the district court and the court of appeals), the taxpayer contended, first, that medical school graduates who had completed their internship and were taking further in-hospital training under some medical specialty program conducted by the Hospital were also excluded from coverage by the provision excluding interns, and, secondly, that such medical school graduates were not employees of the Hospital and the amounts which the taxpayer calls stipends or subsistence allowances were not "wages" within the meaning of the respective statutes. The district court held that the medical school graduates who were taking further in-hospital training after completing their internship were employees of the Hospital, but it gave judgment for the taxpayer on the ground that they

were interns within the meaning of the statute, and the United States appealed. The court of appeals agreed with the district court that the medical school graduates taking advanced in-hospital training were employees of the Hospital. It reversed the judgment of the district court, however, holding that the provisions of the respective statutes excluding hospital interns from social security coverage does not also exclude those medical school graduates who have completed their hospital internship and are taking further in-hospital training in a medical specialty.

ARGUMENT

The decision below presents no question which warrants review by this Court. The petition for a writ of certiorari does not deny that the medical school graduates serving on the staff of St. Luke's Hospital who had completed their internship and were taking further in-hospital training under specialty programs conducted by the Hospital were employees, or that the compensation paid them constituted "wages" within the meaning of the applicable statutes. The only issue presented by the petition is whether such residents are excluded from coverage of the Social Security Act and the Federal Insurance Contributions Act tax by the provisions of the statute excluding "interns" from such coverage. The question has limited importance, there are no conflicting decisions, and the ruling below is clearly correct.

The provisions excluding hospital interns and nurses in training from coverage of the Social Se-

curity Act and the corresponding social security tax were first enacted in the Social Security Act Amendments of 1939, c. 666, 53 Stat. 1360, Sec. 606. As exemption provisions, they may not be extended beyond the clear import of the language used. The exception was enacted for the benefit of student nurses and medical school graduates completing their basic medical education and the hospitals in which they take their internship training, and the term "intern" was then, as now, fully understood by those for whose benefit it was enacted. It plainly was not meant to include those whom the profession characterizes as "residents" and the attempt to stretch it so far is without foundation.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

LOUIS F. OBERDORFER,
Assistant Attorney General.

FRED E. YOUNGMAN,
Attorneys.

NOVEMBER, 1964

APPENDIX

Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.):

SEC. 1426. DEFINITIONS.

When used in this subchapter—

* * * *

(b) [As amended by Sec. 204(a) of the Social Security Act Amendments of 1950, c. 809, 64 Stat. 477] EMPLOYMENT—The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (i) of this section); except that, in the case of service performed after 1950, such term shall not include—

* * * *

(14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law;

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Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 3121. DEFINITIONS.

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(b) Employment.—For purposes of this chapter, the term "employment" means any service performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 either (a) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States

by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that, in the case of service performed after 1954, such term shall not include—

* * * *

(13) [As amended by Sec. 205 (b) of the Social Security Amendments of 1954, c. 1206, 68 Stat. 1052]

Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

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